

CHAPTER 17

SENTENCING

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17.1 GENERALLY

The sentencing requirements of a DUI case are, outside of capital offenses, the most complex and specific within the criminal code. In an effort to fight recidivism and appropriately punish DUI offenders, the legislature has taken much of the discretion away from prosecutors and judges. Depending on the level of offense, the severity of the BAC, and whether the offense is a first or subsequent charge, there exist certain minimum mandatory penalties which must be imposed. These sanctions are in addition to other consequences which follow a DUI conviction and/or arrest such as driver license revocation, impound fees, and counseling costs.

Nevertheless, the process of sentencing in a DUI should follow the same philosophy a prosecutor would use in any case. Namely to punish the offender, protect and compensate victims and society, and reduce the likelihood of recidivism.

As in all cases, a prosecutor, while keeping in mind the statutory requirements and any specific office policies should consider several variables in recommending a sentence, either during plea negotiations or during a contested sentencing hearing. These include, but are not limited to:

- The defendant's criminal history;
- The severity of the driving behavior, which could include:
 - Driving pattern;
 - Accident;
 - Injuries caused; and
 - Traffic violations observed.
- The defendant's cooperation, or lack thereof, with the investigating officer;
- The defendant's BAC and performance on field sobriety tests;
- The defendant's cooperation during the litigation of the criminal charge;
- The defendant's post-arrest behavior such as obtaining counseling (or not) and whether there are any intervening arrests or violations of pre-trial release conditions;
- The input of the victim in the case of an accident;
- The amount of restitution which may be owed in the case of an accident with damage or injuries to a third party;
- The mental health of the defendant which may require additional evaluation and treatment.

Every case is different and not all defendants should be ordered to serve an identical sentence. Some defendants are appropriate candidates for the minimum mandatory sentence, others should be sentenced to much tougher sanctions up to and including the maximum jail or prison term. Yet others, due to unique circumstances, may need to be treated in a creative way to fully serve the interests of justice. Thorough knowledge of the case and preparation for sentencing will assist the prosecutor in helping to craft a sentence which is appropriate for each case and meets the necessary demands of a DUI sentence.

17.2 BEST SENTENCING PRACTICES GUIDE

In 2003, under the direction of Ron Gordon, director, the Utah Sentencing Commission published the *DUI Best Sentencing Practices Guidebook*. This is an excellent resource which explores the philosophies, strategies, and approaches which may be followed to effectively sentence DUI offenders. Although it has not been updated, as of the time of this publication, it has been included in Appendix III for reference. Please note

that when referring to the *Guidebook* that many of the statutes, particularly the matrix relating to sentencing is no longer current.

17.3 SENTENCING MATRICES

The following matrices should assist prosecutors in quickly identifying those minimum mandatory and discretionary sentencing provisions within the Utah DUI statute. They are not intended as a substitute for a careful reading and familiarity with the statute, but rather as an easy-to-read summary of the important provisions of the sentencing requirements.

17.3.1 CLASSIFICATION OF DUI OFFENSES

CLASS B MISDEMEANOR	CLASS A MISDEMEANOR	THIRD DEGREE FELONY
First Offense	First or Second Offense if:	Third offense within ten years
Second Offense	<ul style="list-style-type: none">• Offender caused bodily injury to another• Offender had a passenger under 16 years of age in the vehicle at the time of the offense• Offender was 21 years of age or older and had a passenger under 18 years of age in the vehicle at the time of the offense	<p>First or Second Offense if:</p> <ul style="list-style-type: none">• Offender caused serious bodily injury to another; or• Offender was previously convicted of automobile homicide; or• Offender was previously convicted of any felony DUI offense

17.3.2 DUI SENTENCING MATRIX

	First Offense	Second Offense Within 10 Years	Third + offense w/in 10 years
SENTENCING Jail - SHALL Order:	<ul style="list-style-type: none"> •48 consecutive hours OR •48 hours compensatory service OR •Electronic home confinement 	<ul style="list-style-type: none"> •240 consecutive hours (10 days) OR •240 hours compensatory service OR •Electronic home confinement 	<ul style="list-style-type: none"> •0 - 5 years prison OR •1,500 hours jail (62.5 days) •May also require electronic home confinement
Fine - SHALL order:	Not less than \$700 plus surcharge	Not less than \$800 plus surcharge	Not less than \$1,500 plus surcharge (unless prison is imposed)
Other - SHALL order	<ul style="list-style-type: none"> •Screening & assessment •Education series unless treatment ordered •MAY order treatment 	<ul style="list-style-type: none"> •Screening & assessment •Education series unless treatment ordered •MAY order treatment 	<ul style="list-style-type: none"> •Screening & assessment •Intensive treatment or inpatient treatment and aftercare for not less than 240 hours
Probation:*	MAY order supervised probation	SHALL order supervised probation	SHALL order supervised probation(unless prison is imposed)
Ignition Interlock:	MAY order	SHALL order (3 years)	SHALL order (3 years)
High BAC (.16 or higher):	<ul style="list-style-type: none"> •SHALL order treatment and •probation with interlock or •electronic home confinement** 	<ul style="list-style-type: none"> •SHALL order treatment and •probation with interlock or •electronic home confinement 	<ul style="list-style-type: none"> •SHALL order treatment and •probation with interlock or •electronic home confinement
License Suspension:	MAY order additional 90 days, 180 days, 1 year or 2 years	MAY order additional 90 days, 180 days, 1 year or 2 years	MAY order additional 90 days, 180 days, 1 year or 2 years

*Supervised probation is also required for all convictions of Driving with a Measurable Amount of a Controlled Substance in the Body.

** If the court does not order these conditions, the reasons must be stated on the record

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